

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TINA L. FAIN,

Plaintiff,

v.

KILOLO KIJAKAZI,

Acting Commissioner of Social Security,

Defendant.

Case No. 1:22-cv-01257-SKO

ORDER ON PLAINTIFF’S SOCIAL  
SECURITY COMPLAINT

(Doc. 1)

**I. INTRODUCTION**

On September 30, 2022, Plaintiff Tina L. Fain (“Plaintiff”) filed a complaint under 42 U.S.C. § 1383(c) seeking judicial review of a final decision of the Commissioner of Social Security (the “Commissioner” or “Defendant”) denying her application for Supplemental Security Income (SSI) under the Social Security Act (the “Act”). (Doc. 1.) The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to the Honorable Sheila K. Oberto, United States Magistrate Judge.<sup>1</sup>

**II. BACKGROUND**

Plaintiff was born on May 18, 1969, and has a high school education. (Administrative Record (“AR”) 25, 318, 794.) Plaintiff filed a claim for SSI payments on April 23, 2020, alleging she became disabled on that date due to diabetes, hepatitis C, bipolar disorder, schizophrenia, depression, and a shoulder problem. (AR 14, 112, 125, 146, 317.)

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<sup>1</sup> The parties consented to the jurisdiction of a U.S. Magistrate Judge. (See Doc. 11.)

**A. Relevant Medical Evidence<sup>2</sup>**

An MRI of Plaintiff's thoracolumbar spine performed in June 2019 showed no vertebral fracture, no osteopenia or inflammatory changes, no significant degenerative changes or spondylosis, mild to moderate right convex thoracolumbar scoliosis, and no vertebral malalignment. (AR 491–92, 584.)

In August 2019, Plaintiff complained to pain specialist J.R. Grandhe, M.D., of radiating low back, midback, and neck pain. (AR 560–62.) Upon examination, Plaintiff had normal range of motion and muscle tone, but exhibited tenderness to her spine and facet joints, abnormal sensation along her lower extremities, reduced strength in her upper extremities, and positive straight leg raising tests bilaterally. (AR 560–62.) Dr. Grandhe prescribed her a TENS unit. (AR 562.)

Plaintiff received trigger point injections in her right shoulder and in her cervical spine from Dr. Grandhe in September 2019. (AR 565–68.) During an examination that month, Dr. Grandhe assessed Plaintiff with “chronic neck pain secondary to a motor vehicle accident during childhood and x-ray evidence of moderate degenerative disc disease at C6-7”: right shoulder pain “likely due to frozen shoulder”; “right infrascapular neuralgia on clinical exam”; and “chronic low back pain with positive clinical exam findings for [lumbar degenerative disc disease] but with negative x-ray lumbar spine.” (AR 564.)

In October 2019, Plaintiff received an additional round of injections in both shoulders and her cervical spine. (AR 569–73.) That same month, Plaintiff presented for a follow up appointment complaining of right shoulder pain due to a recent injury. (AR 457–59.) Upon examination, she exhibited decreased range of motion, tenderness, pain with maneuvers in all directions, and decreased strength. (AR 458.) No swelling, effusion or deformity were noted. (AR 458.) She was prescribed Percocet (oxycodone-acetaminophen) for pain. (AR 459.) An x-ray of Plaintiff's right shoulder performed that month was negative, showing no fracture, significant arthritic changes, or gross soft tissue abnormality. (AR 476–77, 588.)

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<sup>2</sup> Because the parties are familiar with the medical evidence, it is summarized here only to the extent relevant to the contested issues.

1 Plaintiff reported in November 2019 that she had begun physical therapy for her right  
2 shoulder and had received an injection, but neither was helpful and the pain persisted. (AR 454.)  
3 Decreased range of motion and pain were observed in Plaintiff's right shoulder, but no  
4 tenderness. (AR 456.) The provider noted that Plaintiff's "acute pain has now become chronic,"  
5 and referred her to an MRI. (AR 456.)

6 She received nerve blocks from Dr. Grandhe both shoulders that same month. (AR 574.)  
7 The nerve blocks provided pain relief for a week or two, but Plaintiff's pain level later returned to  
8 baseline. (AR 576.) Dr. Grandhe administered another round of nerve blocks and diagnosed  
9 Plaintiff with bilateral suprascapular neuritis and right cervical radiculopathy. (AR 576–78.)

10 In January 2020, Dr. Grandhe assessed Plaintiff with chronic neck pain with bilateral  
11 radiculopathy "with x-ray evidence of [degenerative disc disease] most notably at C5–C7";  
12 bilateral suprascapular neuralgia; and cervical and bilateral shoulder myofascial pain syndrome.  
13 (AR 579.) Plaintiff received trigger point injections in her cervical spine. (AR 580–81.)

#### 14 **B. Administrative Proceedings**

15 The Commissioner denied Plaintiff's application for benefits initially on August 14, 2020,  
16 and again on reconsideration on December 28, 2020. (AR 146–51; AR 155–60.) Consequently,  
17 Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"). (AR 161–76.) The  
18 ALJ conducted a hearing on July 20, 2021. (AR 34–65.) Plaintiff appeared at the hearing with  
19 her counsel and testified. (AR 41–59.) A vocational expert also testified. (AR 59–64.)

#### 20 **C. The ALJ's Decision**

21 In a decision dated August 16, 2021, the ALJ found that Plaintiff was not disabled, as  
22 defined by the Act. (AR 14–27.) The ALJ conducted the five-step disability analysis set forth in  
23 20 C.F.R. § 416.920. (AR 17–27.) The ALJ decided that Plaintiff had not engaged in substantial  
24 gainful activity since April 23, 2020, the application date (step one). (AR 17.) At step two, the  
25 ALJ found Plaintiff's following impairments to be severe: degenerative joint disease of the left  
26 shoulder. (AR 17–19.) Plaintiff did not have an impairment or combination of impairments that  
27 met or medically equaled one of the listed impairments in 20 C.F.R. Part 404, Subpart P,  
28 Appendix 1 ("the Listings") (step three). (AR 19.)

1 The ALJ then assessed Plaintiff's RFC and applied the assessment at steps four and five.  
 2 *See* 20 C.F.R. § 416.920(a)(4) ("Before we go from step three to step four, we assess your  
 3 residual functional capacity . . . . We use this residual functional capacity assessment at both step  
 4 four and step five when we evaluate your claim at these steps."). The ALJ determined that  
 5 Plaintiff retained the RFC:

6 to perform medium work as defined in 20 [§] CFR 416.967(c) except can  
 7 lift or carry occasionally 50 pounds, frequently 25; stand or walk for about  
 8 6 hours of an 8- hour workday; sit about 6 hours of an 8-hour workday.  
 9 [Plaintiff] can push or pull with the bilateral upper extremities consistent  
 10 with described lifting and carrying. [Plaintiff] can occasionally climb  
 ladders, ropes, or scaffolding and frequently climb ramps or stairs.  
 [Plaintiff] can frequently stoop, crouch, crawl, or kneel. With the left  
 minor upper extremity, occasional overhead reaching

11 (AR 20–25.) Although the ALJ recognized that Plaintiff's impairments "could reasonably be  
 12 expected to cause the alleged symptoms[.]" they rejected Plaintiff's subjective testimony as "not  
 13 entirely consistent with the medical evidence and other evidence in the record." (AR 21.) The  
 14 ALJ determined that Plaintiff had no past relevant work (step 4), and was not disabled because,  
 15 given her RFC, she could perform a significant number of other jobs in the local and national  
 16 economies, specifically patients transporter, dining room attendant, and machine packager (step  
 17 5). (AR 25–27.)

18 Plaintiff sought review of this decision before the Appeals Council, which denied review  
 19 on August 24, 2022. (AR 1–6.) Therefore, the ALJ's decision became the final decision of the  
 20 Commissioner. 20 C.F.R. § 416.1481.

### 21 III. LEGAL STANDARD

#### 22 A. Applicable Law

23 An individual is considered "disabled" for purposes of disability benefits if they are  
 24 unable "to engage in any substantial gainful activity by reason of any medically determinable  
 25 physical or mental impairment which can be expected to result in death or which has lasted or can  
 26 be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §  
 27 423(d)(1)(A). However, "[a]n individual shall be determined to be under a disability only if  
 28 [their] physical or mental impairment or impairments are of such severity that [they are] not only

1 unable to do [their] previous work but cannot, considering [their] age, education, and work  
 2 experience, engage in any other kind of substantial gainful work which exists in the national  
 3 economy.” *Id.* § 423(d)(2)(A).

4 “In determining whether an individual’s physical or mental impairment or impairments  
 5 are of a sufficient medical severity that such impairment or impairments could be the basis of  
 6 eligibility [for disability benefits], the Commissioner” is required to “consider the combined  
 7 effect of all of the individual’s impairments without regard to whether any such impairment, if  
 8 considered separately, would be of such severity.” *Id.* § 423(d)(2)(B). For purposes of this  
 9 determination, “a ‘physical or mental impairment’ is an impairment that results from anatomical,  
 10 physiological, or psychological abnormalities which are demonstrable by medically acceptable  
 11 clinical and laboratory diagnostic techniques.” *Id.* § 423(d)(3).

12 “The Social Security Regulations set out a five-step sequential process for determining  
 13 whether a claimant is disabled within the meaning of the Social Security Act.” *Tackett v. Apfel*,  
 14 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 20 C.F.R. § 404.1520); *see also* 20 C.F.R. § 416.920.  
 15 The Ninth Circuit has provided the following description of the sequential evaluation analysis:

16 In step one, the ALJ determines whether a claimant is currently engaged in  
 17 substantial gainful activity. If so, the claimant is not disabled. If not, the ALJ  
 18 proceeds to step two and evaluates whether the claimant has a medically severe  
 19 impairment or combination of impairments. If not, the claimant is not disabled. If  
 20 so, the ALJ proceeds to step three and considers whether the impairment or  
 21 combination of impairments meets or equals a listed impairment under 20 C.F.R.  
 22 pt. 404, subpt. P, [a]pp. 1. If so, the claimant is automatically presumed disabled.  
 If not, the ALJ proceeds to step four and assesses whether the claimant is capable  
 of performing [their] past relevant work. If so, the claimant is not disabled. If not,  
 the ALJ proceeds to step five and examines whether the claimant has the [RFC] . .  
 . to perform any other substantial gainful activity in the national economy. If so,  
 the claimant is not disabled. If not, the claimant is disabled.

23 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *see, e.g.*, 20 C.F.R. § 416.920(a)(4)  
 24 (providing the “five-step sequential evaluation process” for SSI claimants). “If a claimant is  
 25 found to be ‘disabled’ or ‘not disabled’ at any step in the sequence, there is no need to consider  
 26 subsequent steps.” *Tackett*, 180 F.3d at 1098 (citing 20 C.F.R. § 404.1520); 20 C.F.R. § 416.920.

27 “The claimant carries the initial burden of proving a disability in steps one through four of  
 28 the analysis.” *Burch*, 400 F.3d at 679 (citing *Swenson v. Sullivan*, 876 F.2d 683, 687 (9th Cir.

1 1989)). “However, if a claimant establishes an inability to continue her past work, the burden  
2 shifts to the Commissioner in step five to show that the claimant can perform other substantial  
3 gainful work.” *Id.* (citing *Swenson*, 876 F.2d at 687).

4 **B. Scope of Review**

5 “This court may set aside the Commissioner’s denial of [social security] benefits [only]  
6 when the ALJ’s findings are based on legal error or are not supported by substantial evidence in  
7 the record as a whole.” *Tackett*, 180 F.3d at 1097 (citation omitted). “Substantial evidence is  
8 defined as being more than a mere scintilla, but less than a preponderance.” *Edlund v.*  
9 *Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001) (citing *Tackett*, 180 F.3d at 1098). “Put another  
10 way, substantial evidence is such relevant evidence as a reasonable mind might accept as  
11 adequate to support a conclusion.” *Id.* (citing *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

12 “This is a highly deferential standard of review . . . .” *Valentine v. Comm’r of Soc. Sec.*  
13 *Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). “The ALJ’s findings will be upheld if supported by  
14 inferences reasonably drawn from the record.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th  
15 Cir. 2008) (citation omitted). Additionally, “[t]he court will uphold the ALJ’s conclusion when  
16 the evidence is susceptible to more than one rational interpretation.” *Id.*; *see, e.g., Edlund*, 253  
17 F.3d at 1156 (“If the evidence is susceptible to more than one rational interpretation, the court  
18 may not substitute its judgment for that of the Commissioner.” (citations omitted)).

19 Nonetheless, “the Commissioner’s decision ‘cannot be affirmed simply by isolating a  
20 specific quantum of supporting evidence.’” *Tackett*, 180 F.3d at 1098 (quoting *Sousa v.*  
21 *Callahan*, 143 F.3d 1240, 1243 (9th Cir. 1998)). “Rather, a court must ‘consider the record as a  
22 whole, weighing both evidence that supports and evidence that detracts from the  
23 [Commissioner’s] conclusion.’” *Id.* (quoting *Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993)).

24 Finally, courts “may not reverse an ALJ’s decision on account of an error that is  
25 harmless.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citing *Stout v. Comm’r, Soc.*  
26 *Sec. Admin.*, 454 F.3d 1050, 1055–56 (9th Cir. 2006)). Harmless error “exists when it is clear  
27 from the record that ‘the ALJ’s error was inconsequential to the ultimate nondisability  
28 determination.’” *Tommasetti*, 533 F.3d at 1038 (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d

880, 885 (9th Cir. 2006)). “[T]he burden of showing that an error is harmful normally falls upon the party attacking the agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (citations omitted).

#### IV. DISCUSSION

Plaintiff contends that the ALJ erred, *inter alia*, by finding Plaintiff’s low back, right shoulder, and cervical spine impairments neither medically determinable nor severe, resulting in an incomplete RFC assessment. (Doc. 13 at 18–20.) The Court agrees, and will remand for further proceedings.

##### A. Legal Standard

At step two, the ALJ must determine if the claimant has a medically determinable impairment or combination of impairments that are severe, such that they would significantly limit the claimant’s ability to perform basic work activities. *See Smolen v. Chater*, 80 F.3d 1273, 1289-90 (9th Cir. 1996) (citation omitted); 20 C.F.R. § 416.920(a)(4)(ii). A medically determinable impairment “must result from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques.” 20 C.F.R. § 416.921. A severe impairment is one that “significantly limits” a claimant’s “physical or mental ability to do basic work activities.” 20 C.F.R. § 416.920(c). An ALJ must consider all the evidence at step two to determine whether a medically determinable impairment significantly limits the claimant’s ability to perform basic work activities. *Id.* § 416.20(a); *Bowen v. Yuckert*, 482 U.S. 137, 153 (1987).

“An impairment or combination of impairments may be found ‘not severe only if the evidence establishes a slight abnormality that has no more than a minimal effect on an individual’s ability to work.’” *Webb v. Barnhart*, 433 F.3d 683, 686–87 (9th Cir. 2005) (quoting Social Security Ruling (“SSR”) 96–3p (1996)). The purpose of step two is to operate as “a de minimis screening device to dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996); *see also Hoopai v. Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007) (the step two finding is “merely a threshold determination” that “only raises a prima facie case of a disability.”); *Buck v. Berryhill*, 869 F.3d 1040, 1048–49 (9th Cir. 2017) (“Step two is merely a



1 threshold determination meant to screen out weak claims. It is not meant to identify the  
2 impairments that should be taken into account when determining the RFC.”) (internal citations  
3 omitted). The claimant retains the burden of proof at step two. *See Parra v. Astrue*, 481 F.3d  
4 742, 746 (9th Cir. 2007). Absence of objective medical evidence may justify an adverse step two  
5 determination. *See Ukolov v. Barnhart*, 420 F.3d 1002, 1006 (9th Cir. 2005).

6 **B. Analysis**

7 At step two, the ALJ determined Plaintiff’s alleged low back, right shoulder, and cervical  
8 spine impairments were not medically determinable and not severe because “the record lacks the  
9 requisite objective medical evidence necessary to establish a medically determinable  
10 impairment.” (AR 19 (citing 20 C.F.R. § 416.913(a) and 416.929(b).) This finding is not  
11 supported by substantial evidence in the record.

12 First, regarding Plaintiff’s cervical spine impairment, the ALJ noted that while the  
13 medical record “mention[s] x-ray evidence of moderate degenerative disc disease of the C6-7,” it  
14 “does not contain the actual x-ray imaging studies.” (AR 19.) “The ALJ in a social security case  
15 has an independent ‘duty to fully and fairly develop the record and to assure that the claimant’s  
16 interests are considered.’” *Tonapetyan v. Halter*, 242 F.3d 1144, 1151 (9th Cir. 2001) (quoting  
17 *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996)). The absence of these x-ray results, of  
18 which the ALJ was on notice, should have suggested to the ALJ that the record was not adequate  
19 to allow for a proper review of Plaintiff’s alleged cervical spine impairment, thus triggering the  
20 ALJ’s duty to develop the record. *See Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001)  
21 (the ALJ’s duty to supplement the record is triggered if the record is inadequate to allow for  
22 proper evaluation of the evidence.); *Kerley v. Berryhill*, No. 2:16-cv-01841 JRC, 2017 WL  
23 3128390, at \*3 (W.D. Wash. July 24, 2017) (finding duty to develop the record was triggered  
24 when the ALJ was put on notice medical records evidencing a physical examination conducted by  
25 petitioner’s treating physician resulting in a diagnosis of fibromyalgia were missing from the  
26 record). The ALJ’s reliance on the absence of those results to support their conclusion is  
27 problematic, particularly when they could have been obtained readily. *See, e.g., Vargas v. Saul*,  
28 No. 1:19-CV-00299-CWD, 2020 WL 5521039, at \*5 n.7 (D. Idaho Sept. 14, 2020) (“[T]he Court



1 finds fault with the ALJ's reliance upon the absence of the test results in the record to support his  
2 conclusion, when it was obvious they were missing and could have been easily requested.”).

3 But even had the cervical x-ray results been in the record, the ALJ's evaluation of the  
4 “objective medical evidence” was too narrow. “Objective medical evidence” is defined as  
5 “medical signs, laboratory findings, or both.” 20 C.F.R. § 416.913(a)(1). *See also* 20 C.F.R. §  
6 416.929(b) (“Medical signs and laboratory findings, established by medically acceptable clinical  
7 or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which  
8 results from anatomical, physiological, or psychological abnormalities and which could  
9 reasonably be expected to produce the pain or other symptoms alleged.”). “Laboratory findings”  
10 means “one or more anatomical, physiological, or psychological phenomena that can be shown  
11 by the use of medically acceptable laboratory diagnostic techniques, including “chemical tests  
12 (such as blood tests), electrophysiological studies (such as electrocardiograms and  
13 electroencephalograms), medical imaging (such as X-rays), and psychological tests.” 20 C.F.R.  
14 § 416.902(g). “Medical signs” are “one or more anatomical, physiological, or psychological  
15 abnormalities that can be observed, apart from [the claimant's] statements (symptoms),” and they  
16 “must be shown by medically acceptable clinical diagnostic techniques.” 20 C.F.R. § 416.902(l).

17 Here, in finding Plaintiff's alleged low back, right shoulder, and cervical spine  
18 impairments were neither medically determinable nor severe, the ALJ focused solely on  
19 “laboratory findings,” *i.e.*, x-ray studies, and improperly ignored the “medical signs” evidence in  
20 the record. (*See* AR 18.) The ALJ's decision makes no mention, much less discussion, of the  
21 clinical diagnostic examinations performed both prior to and after the x-rays, showing decreased  
22 range of motion, tenderness, pain with maneuvers in all directions, and decreased strength in  
23 Plaintiff's right shoulder; and tenderness to Plaintiff's spine and facet joints, trigger points in her  
24 cervical and lumbar spine with taut bands and jump signs, abnormal sensation along her lower  
25 extremities, reduced strength in her upper extremities, positive Gaenslen's and Patrick's signs,  
26 and positive straight leg raising tests bilaterally. (AR 456, 458, 560–62). There is also no  
27 mention or discussion of the medical signs of Plaintiff's low back, right shoulder, and cervical  
28 spine impairments that were observed by pain specialist Dr. Grandhe, including chronic neck

1 pain, right shoulder pain “likely due to frozen shoulder,” “right infrascapular neuralgia on clinical  
 2 exam,” “chronic low back pain with positive clinical exam findings for [lumbar degenerative disc  
 3 disease],” bilateral suprascapular neuritis/neuralgia, right cervical radiculopathy, and cervical and  
 4 bilateral shoulder myofascial pain syndrome. (AR 564, 576–78, 579, 580–81.) The ALJ’s  
 5 conclusion that these impairments were neither medically determinable nor severe was therefore  
 6 based on an incomplete, and therefore inadequate, discussion of the objective medical evidence.  
 7 20 C.F.R. §§ 416.913(a)(1), 416.929(b). *See Reddick v. Chater*, 157 F.3d 715, 722–23 (9th Cir.  
 8 1998) (An ALJ may not “cherry pick” from a record to support the conclusion, but rather must  
 9 account for the context of the whole record.); *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir.  
 10 1984) (“Although it is within the power of the [ALJ] to . . . weigh conflicting evidence, he cannot  
 11 reach a conclusion first, and then attempt to justify it by ignoring competent evidence in the  
 12 record that suggests an opposite result.). *See also Shah v. Comm’r of Soc. Sec.*, No. 2:19-CV-  
 13 1184-KJN, 2020 WL 2992121, at \*3 (E.D. Cal. June 4, 2020) (“[T]he ALJ’s scant analysis of  
 14 plaintiff’s PTSD at Step Two ignores the large amount of data indicating the impairment is  
 15 something beyond a ‘slight abnormality.’”).

16 The errors discussed above are harmful because it does not appear that Plaintiff’s low  
 17 back, right shoulder, and cervical spine impairments were considered when determining her RFC.  
 18 *Cf. Buck*, 869 F.3d at 1049. Here, in contrast to *Buck*, the ALJ failed to acknowledge these  
 19 impairments beyond the assessment at step two (except only to point out that state agency doctors  
 20 appear mistakenly to have found only right shoulder limitations (and no left shoulder limitations)  
 21 when the record supported left shoulder impairments, *see* AR 22). As the ALJ did not mention  
 22 Plaintiff’s low back, right shoulder, and cervical spine impairments at any of the subsequent  
 23 steps, they apparently rejected them in their determination of the RFC. *See, e.g., Concepcion J. v.*  
 24 *Comm’r of Soc. Sec.*, No. 1:19-CV-3070-RMP, 2020 WL 13505037, at \*9 (E.D. Wash. Apr. 6,  
 25 2020). Yet the ALJ did not set forth any reason for rejecting evidence relevant to Plaintiff’s  
 26 RFC. Because of this, the Court “cannot determine whether [this] error was harmless . . . and  
 27 therefore [does] not know whether the ALJ’s omission was ‘inconsequential to the ultimate  
 28 nondisability determination.’” *Black v. Astrue*, 472 F. App’x 491, 493 (9th Cir. 2012) (quoting

1 *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006)).

2 “Failure to provide reasoning that allows this Court to evaluate whether an error was  
3 harmless is an appropriate reason for this Court to remand to the ALJ.” *Concepcion J.*, 2020 WL  
4 13505037, at \*9 (citing *Black*, 472 F. App’x. at 493). *See also Carson v. Comm’r of Soc. Sec.*,  
5 No. 1:21-CV-00508-EPG, 2023 WL 4209750, at \*3 (E.D. Cal. June 27, 2023) (remanding where  
6 it did “not appear that the ALJ specifically addressed symptoms related to cervical spine disease  
7 when determining Plaintiff’s RFC, and the ALJ’s earlier determination that the impairment was  
8 not severe may have limited the evaluation at this step as well”); *Morton v. Colvin*, No. 2:15-CV-  
9 34-RMP, 2016 WL 1089264, at \*6 (E.D. Wash. Mar. 18, 2016) (“The Court finds that remand for  
10 further proceedings is appropriate to allow the Commissioner to make the appropriate findings at  
11 step two.”). On remand, the ALJ shall develop the record and address what, if any, additional  
12 limitations should be added to the RFC regarding Plaintiff’s low back, right shoulder, and  
13 cervical spine impairments, and whether any change to the RFC affects the ALJ’s ultimate  
14 decision regarding disability.<sup>3</sup>

## 15 V. CONCLUSION AND ORDER

16 Based on the foregoing, the Court finds that the ALJ’s decision is not supported by  
17 substantial evidence and is, therefore, VACATED and the case REMANDED to the ALJ for  
18 further proceedings consistent with this Order. The Clerk of Court is DIRECTED to enter  
19 judgment in favor of Plaintiff Tina L. Fain and against Defendant Kilolo Kijakazi, Acting  
20 Commissioner of Social Security.

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23 <sup>3</sup> Because further proceedings are required, the Court does not reach Plaintiff’s additional assertions of error directed  
24 to the medical opinion evidence and subjective symptom testimony. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th  
25 Cir. 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline to reach [plaintiff’s]  
26 alternative ground for remand.”); *see also Rendon G. v. Berryhill*, No. EDCV 18-0592-JPR, 2019 WL 2006688, at \*8  
(C.D. Cal. May 7, 2019); *Harris v. Colvin*, No. 13-cv-05865 RBL, 2014 WL 4092256, at \*4 (W.D. Wash. Aug. 11,  
2014); *Augustine ex rel. Ramirez v. Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) (“[The] Court need not  
address the other claims plaintiff raises, none of which would provide plaintiff with any further relief than granted,  
and all of which can be addressed on remand.”).

27 It bears noting, however, that the Court is inclined to agree with Plaintiff that her treatment, which included  
28 injections, nerve blocks, and opioid medications (*see* AR 459, 565–81), cannot properly be characterized as  
“conservative” within the meaning of Ninth Circuit jurisprudence. *See, e.g., Carlos M. A. v. Kijakazi*, No. ED CV  
22-0038-E, 2022 WL 16894847, at \*3 (C.D. Cal. July 11, 2022) (collecting cases).

1 IT IS SO ORDERED.

2 Dated: November 6, 2023

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE